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REMARKS

Claims 1-11, 14, 17, 19-21 and 26 are pending in this application. Claims 1-11, 14, 17, 19-21 and 26 stand rejected.

THE OFFICE ACTIONDouble Patenting

Claims 1-11 and 14 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 and 13-14 of U.S. Patent No, 7,098,330 ("the '330 patent"). The Examiner contends that the conflicting claims are not patentably distinct from each other because "there is significant overlap between the instant claims and the claims of U.S. Patent No, 7,098,330 when . . . D = pyridyl, Rx and Ry together form a benzo ring; and R2 and R2' together form a benzo ring." Furthermore, the Examiner contends that the '330 "patent discloses species in claim 8 that are embraced by the instant claims." Applicants traverse.

As an initial matter, applicants would like to note that the '330 patent species cited by the Examiner (shown in table below) are not embraced by the instant claims.

4 <sup>th</sup> species at column 405*	2 <sup>nd</sup> species at column 409	3 <sup>rd</sup> species at column 410

The instant claims are directed towards compounds wherein Ring C must be substituted in the ortho position with R<sup>1</sup> (i.e., R<sup>1</sup> may not be hydrogen). The three examples cited by the Examiner do not fall within the instant claims, as they are unsubstituted at the ortho position of Ring C (Ring D in the '330 patent).

Accordingly, applicants respectfully request that the Examiner withdraw these double patenting rejections.

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\* Applicant presumes Examiner intended the 4<sup>th</sup> species, shown in the table, not the 5<sup>th</sup> species, which shows a phenyl rather than a pyridyl for Ring C

35 U.S.C. § 112, First Paragraph

Claims 1-11, 14, 17, 19-21 and 26 stand rejected under 35 U.S.C. § 112, first paragraph. The Examiner contends that "the specification, while being enabling for compounds of formula (II) and pharmaceutically acceptable salts thereof, does not reasonably provide enablement for the prodrug of the compounds of formula (II)." As suggested by the Examiner, applicants have replaced the phrase "pharmaceutically acceptable derivative or prodrug thereof" with "pharmaceutically acceptable salt thereof." Support for this amendment may be found in the specification as originally filed (see e.g., page 27, lines 8-14).

Accordingly, applicants respectfully request that the Examiner withdraw these U.S.C. § 112, first paragraph rejections.

35 U.S.C. § 112, Second Paragraph

Claims 1-11, 14, 17, 19-21 and 26 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

- a) and b) The Examiner contends that the terms "prodrug" and "derivative" are indefinite. Applicants have replaced the phrase "pharmaceutically acceptable derivative or prodrug thereof" with "pharmaceutically acceptable salt thereof" thus obviating these rejections.
- c) The Examiner contends that claim 2 is not clear because a naphthyl ring in a bicyclic ring system that cannot be formed with Ring C is pyridinyl. Applicants have amended claims 2-3 to delete the term "naphthyl" and have amended claims 4-5 to replace the term "naphthyl" with the term "isoquinolinyl". Support for these amendments may be found in the specification as originally filed (see e.g., page 42, lines 2-3).
- d) The Examiner contends that the term "diabetes" is ambiguous. Applicants have added "type II" in front of the term "diabetes." Support for this amendment may be found in the specification as originally filed (see e.g., page 3, line 26 to page 4, line 16).

For all of the above reasons, applicants respectfully request that the Examiner withdraw these 35 U.S.C. § 112, second paragraph rejections.

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CONCLUSION

Applicants respectfully request that the Examiner enter the above amendments, consider the foregoing remarks, and allow the pending claims to issue.

Respectfully submitted,

  
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